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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,
Plaintiff,

v.

Duane Thomas Lee,
Defendant/Movant.

No. CV-24-08062-PCT-JAT
CR-05-00594-PCT-JAT

ORDER

Pending before the Court are self-represented Movant Duane Thomas Lee's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 1) and Motion for Appointment of Counsel (Doc. 2). The Court will summarily deny the Motion.

I. Background

This is Movant's **third** § 2255 Motion challenging his conviction and sentence in CR 05-00594-PCT-JAT. The first motion was denied on the merits on April 29, 2009 (Doc. 58 in CR 05-00594-PCT-JAT). On February 16, 2017, the Ninth Circuit Court of Appeals authorized Movant to file a second § 2255 Motion, which was filed in CV 16-08138-PCT-JAT (JFM)). On October 9, 2018, the Court denied the second § 2255 Motion. Movant appealed and, on May 19, 2023, the Ninth Circuit affirmed the dismissal of the second § 2255 Motion. On March 19, 2024, Movant filed a "Motion to Dismiss Case" (Doc. 50 in CV 16-08138), and a Motion for Appointment of Counsel (Doc. 51 in CV 16-08138). In a March 26, 2024 Order, the Court construed the "Motion to Dismiss" as a

1 Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in
 2 Federal Custody and directed the Clerk of Court to open a new civil case for consideration
 3 of the § 2255 Motion. The Court opened this case and filed a copy of the new Motion in
 4 Movant's criminal case (Doc. 69 in CR 05-00594-PCT-JAT).

5 Under 28 U.S.C. §§ 2255(h) and 2244, Movant may not file a second or successive
 6 § 2255 motion in the district court unless he has obtained a certification from the Ninth
 7 Circuit Court of Appeals authorizing the district court to consider the second or successive
 8 § 2255 motion. Because Movant has failed to obtain permission from the Ninth Circuit
 9 before filing this successive § 2255 motion, the Court lacks subject matter jurisdiction over
 10 the successive § 2255 motion and must dismiss it. *See United States v. Allen*, 157 F.3d
 11 661, 664 (9th Cir. 1998) (concluding that the district court lacked jurisdiction to consider
 12 a successive § 2255 motion when movant had failed to request certification from the
 13 appellate court prior to filing successive § 2255 motion in the district court); *United States*
 14 *v. Alvarez-Ramirez*, 128 F. Supp. 2d 1265, 1267 (C.D. Cal. 2001) (dismissing a second
 15 § 2255 motion for lack of subject matter jurisdiction because movant failed to obtain Ninth
 16 Circuit certification).

17 Pursuant to Ninth Circuit Rule 22-3(a), the Court will direct the Clerk of Court to
 18 refer Movant's second § 2255 motion to the Ninth Circuit Court of Appeals and will deny
 19 as moot Movant's Motion for Appointment of Counsel.

20 **IT IS ORDERED:**

21 (1) The Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct
 22 Sentence by a Person in Federal Custody (Doc. 69 in CR 05-00594-PCT-JAT) is **denied**
 23 and the civil action opened in connection with this Motion (CV 24-08062-PCT-JAT) is
 24 **dismissed without prejudice**. The Clerk of Court must enter judgment accordingly.

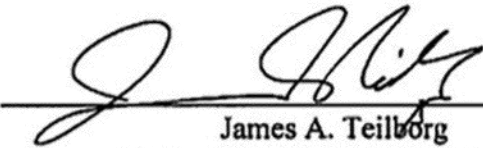
25 (2) Movant's Motion for Appointment of Counsel (Doc. 2) is **denied as moot**.

26 (3) The Clerk of Court must send a copy of this Order and Movant's § 2255
 27 Motion (Doc. 1 in CV 24-08062-PCT-JAT) to the **Ninth Circuit Court of Appeals** and to
 28 **Plaintiff United States of America**.

1 (4) Pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, in the
2 event Movant files an appeal, the Court declines to issue a certificate of appealability
3 because reasonable jurists would not find the Court's procedural ruling debatable. *See*
4 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

5 Dated this 3rd day of June, 2024.

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James A. Teilborg
Senior United States District Judge